9553.0060, subp. 3, Allowable Interest Expense.

153. The provisions of this subpart were shown to be necessary and reasonable, as amended, and the technical amendments made to it do not constitute substantial changes for purposes of Minn. Rule 1400.1100 (1985). Several persons question the limited ability of owners to sell their facilities and change interest expenses. They suggested that the Department address that issue in future rules. Mr. Gee noted, for example, that the limitations in the rule do not address a provider's ability to get out of the business or to sell his business if one of the members of the corporation dies; and Mr. Hargis noted that some provisions should be included in the rule for bona fide sales. It was suggested that the interest rate limitations on the sale of facilities could be resolved if the Department went to a different kind of reimbursement system whereby the property costs are reimbursed in the form of a rental. These issues have been discussed before. The Department is working on a rental concept at this time but has been unable to implement a rental concept for ICF/MRs as it has done for nursing homes because of a lack of funds to undertake the necessary studies and employ the necessary technical help. Industry representatives frequently criticized the Department's failure to implement a rental system and suggested that the Administrative Law Judge order the Agency to do so. Such an order is outside the scope of the authority of the Adminstrative Law Judge, who, by statute, is limited to evaluating the reasonableness of the concepts and systems proposed by the Agency.

9553.0060, supb. 3, item C.

154. Under this item, restricted funds must be used (exhausted) to purchase or replace capital assets before a loan may be made for such purchases. For purposes of this item, a restricted fund is one whose use is restricted to the purchase or replacement of capital assets. Kathleen Pine objected to this rule because a donor may restrict funds to a purpose other than the purchase or replacement of capital assets. However, this rule does not apply to funds unless they are restricted to the purposes mentioned. It does not apply to funds that are restricted to other purposes. Therefore, this part is necessary and reasonable as proposed.

9553.0060, subp. 3, item G.

155. In response to Mr. Gee's suggestion the Department proposes to amend item G, subitem (3), unit (b) to exclude the costs of refinancing balloon payments, such as points, origination fees, or title searches. That rule, as amended, is necessary and reasonable and the amendment made does not constitute a substantial change for purposes of Minn. Rule 1400.1100.

9553.0060, supb. 3, item H.

156. In addition, the Department proposed an amendment to this item. As originally proposed, it provided that the cost of land purchased prior to January 1, 1984 must be limited to the laws and rules in effect on December 31, 1983. As amended, this provision would limit the cost of land purchased prior to January 1, 1984 to $1,000 per licensed bed. This amendment was criticized by Kathleen Pine on the grounds that the limitation in effect on December 31, 1983 was not $1,000 unless other limitations were exceeded. That

objection is appropriate. Former 12 MCAR § 2.052D.5.b(1)(a) did not necessarily limit land costs to the $1,000 figure. As such, the amendment is erroneous and constitutes an impermissible retroactive repeal of prior rules and constitutes a substantive violation of law. To cure this defect, the amendment must not be adopted and the former rule governing the limitation must be cited.

9553.0060, subp. 3, item I.

157. This item states that interest expense incurred on a capital debt or working capital loan between related organizations shall not be an allowable cost. The Department's position is that there is no cost when a related organization borrows money from itself. Moreover, since there is no market force or outside observer attesting to the need and validity of the transaction, the Department has determined that the interest on loans between related organizations should not be reimbursed. This limitation was criticized by Mr. Gee and others. It was noted, for example, that obtaining a loan from a related organization often avoids the necessity to pledge collaterial or to pay loan fees, points and other expenses connected with obtaining a loan through normal channels, and that it can substantially reduce the time an employee must spend obtaining a loan. The Department is using the disallowance as a mechanism to avoid examining every transaction to determine the reasonableness of the interest rate charged. That is a rational basis for the rule and given the other explanations cited by the Department, it must be determined that the rule proposed is necessary and reasonable. Nonetheless, the Department should be able to accomplish the same objective in other ways. A related organization is not in business to loan money and the rate of return it would expect should not be same as the rate of return a bank would demand. Consequently, the Department should consider permitting loans between related organizations at the prime rate or at some point below the prime rate depending on the date of the loan. This should provide a guarantee that the interest rate is not excessive. In the long run, this could be a cost-saving device beneficial to the Department as well as the facilities, and it has a built-in check on abuses.

9553.0060, subp. 4, Computation of Property Related Payment Rate.

158. Under this subpart, a facility's property-related per diem is determined by dividing its allowable property-related costs by 96% of its licensed capacity days. For facilities with 15 or fewer licensed beds, the lesser of 96% of licensed capacity days or resident days may be used, but in no case shall resident days be less than 85% of licensed capacity days. That amount is then added to the capital debt reduction allowance in subpart 5, or the rental allowance in subpart 7, item F. The sum is the property-related payment rate. Under prior reimbursement rules, allowable property-related costs were divided by 93% of capacity days to calculate a facility's property-related per diem. The 93% occupancy factor was designed as an incentive to encourage high occupancy rates in the industry. However, since 1976 occupancy rates in the industry have been consistently high and the current average is 98%. In the Department's view, the high occupancy rates in the industry reflect a demand for resident care and do not result from the occupancy incentive previously available. For that reason, the percentage in subpart 4 has been increased as recommended in the LAC Report. The decision

to increase the percentage factor to 96% was criticized by many commentators. Mr. Baldus argued that the industry is not static because many residents are being moved out of residential facilities into less restrictive alternatives. He said that movement will affect each provider's ability to maintain occupancy rates at prior levels. He argued that increasing the percentage will eliminate the incentive to be efficient and will actually encourage facilities to maintain residents in inappropriate situations. He noted that with the advent of the screening process for placement into ICF/MR facilities, there has been a significant increase in the number of non-resident days; and agencies who aggressively seek to place individuals into alternative programs will face a risk of falling to less than 96% occupancy levels, encouraging then to retain residents in an inappropriate situation. In his view the Department should retain the 93% occupancy incentive to encourage the movement of individuals out of ICF/MRs and into less restrictive settings. MAHCF suggested the 93% limit be retained so that facilities can have additional funds to use for employee incentives and rewards or to purchase items for the residents that may not come under generally allowable costs. All these arguments must be evaulated by the Department who is charged with making policy choices among reasonable alternatives. Either percentage is reasonable and is supported by the record. Since the 96% factor is reasonable, it must stand unless the Department determines, for the reasons provided by interested persons, that it should be reduced to 95, 94, or 93%.

<u>9553.0060, subp. 5, Capital Debt Reducation Allowance.</u>

159. According to the Department's SNR (p. 69), the capital debt reduction allowance is designed to reduce the amount of allowable capital debt and to establish a payment which rewards the accumulation of equity. It is designed to implement the provisions of Minn. Stat. § 256B.501, subd. 3(d), which requires these rules to have procedures providing incentives to reward the accumulation of equity. The capital debt reduction allowance is available to providers who own their facility or who lease their facility from a related organization. The amount of the capital debt reduction allowance, and the amount that must be applied to reduce capital debt, is set forth in a table in item A. It provides as follows:

Percentage of Equity In Capital Assets Used by the Facility	Total Capital Debt Reducation Allowance Per Resident Day (in dollars)	Amount Which Must Be Applied to Reduce Capital Debt (in dollars)
less than 20.01	.50	.50
20.01 to 20.00	.50	.40
40.01 to 60.00	.65	.30
60.01 to 80.00	.80	.20
80.01 to 100.00	1.00	0

The provider's percentage of equity in the facility is determined by dividing equity by the total allowable historical capital cost of capital assets. The resulting figure is then applied to the chart to determine the total capital debt reduction allowance and the amont which must be applied to reduce capital debt.

160. The rule was the subject of a great deal the criticism and obtained only partial approval from the staff of the Legislative Auditor's Office. Mr. Baumgarten felt that it was appropriate to link the allowance to capital debt reduction in an industry where excessive leveraging creates instability and that the rule meets the statutory requirement of providing "incentives to reward accumulation of equity." However, he felt that the capital debt reduction allowance deserved further study to determine if the right rate of return on investment would be available under the rules proposed by the Department

Representatives appearing on behalf of the industry uniformly argued that the capital debt reduction allowance does not provide facilities with a fair return on their equity. Mr. Sajevic noted, for example, that one only has to look to and apply the funded depreciation provisions in the rule to older facilities in order to realize the inadequacy of the equity returns available under the rule. He noted that many facilities have aged in their amortization to the point that principal payments on debt exceed the depreciation reimbursement. Without a fair return on equity, those older providers, in his view, will have no way to meet their mortgage obligations. He recommended, therefore, that the rule be amended to reimburse facilities for the greater of their principal payments or allowable depreciation and to increase the return on equity. Mr. Furlong also charged that the capital debt reduction allowance available under the rule will force many smaller facilities into bankruptcy. He challenged the cash flows that Mr. Osell calculated and argued that the funds available to a provider at the end of the 35 year period used by Mr. Osell would not exceed $48,000. He argued that the $602,000 figure that Mr. Osell calculated could never be obtained because facilities would be required to pay income taxes and to use most of those funds to pay off the principal balance on a provider's mortgage making the compounding of interest calculated by Mr. Osell impossible. Mr Furlong argued that the return available under the capital debt reduction allowance would be substantially smaller than if the person had invested his original equity capital in a certificate of deposit at 9% simple interest compounded annually. Mr. Furlong concluded, therefore, that there is no incentive to accumulate equity under the rules and that the return available is inadequate. For the reasons mentioned by Mr. Furlong and others, industry representatives uniformly agreed that the minimal payments the Department should make under the capital debt reduction allowance should be those available under Rule 53T or in prior versions of the permanent rule. The Administrative Law Judge agrees that the capital debt reduction allowance proposed by the Department does not give a fair return on equity invested. However, the statute does not require a "fair return" on equity, and since the rule does provide some incentives to reward the accumulation of equity, it is concluded that the rule is necessary and reasonable for purposes of Minn. Stat. § 256B.501, subd. 3. However the Department should reconsider the amount of the capital debt reduction allowance that must be used to pay off capital debts and the amount available for equity because the cash flows of some providers may be so severely restricted under the rule that their financial stability may be jeopardized. Many commentators questioned the ability of providers to survive with the cash flows generated by the capital debt reduction allowance. Mr. Sajevic, Mr. Furlong and Mr. Stewart all mentioned the amount of cash flow as the most serious defect in the rule. Although there are no specific figures relating to specific facilities that demonstrate insufficient cash flows, the Department should seriously consider adopting a procedure to address cash flow problems if they arise or increase the cash flows available.

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9553.0060. subp. 5, item C.

161. Under this item, if the prepayment of a capital debt is prohibited under the terms of a facility's loan, and if the provider does not have any other capital debts, the provider cannot receive that portion of the allowance that must be applied to reduce capital debt. The Minnesota Association of Voluntary Social Service Agencies (MAVSSA) argued that this provision would encourage providers to incur debts contrary to the Department's express purpose of creating incentives to reward the accumulation of equity. Mr. Larson argued that it was an arbitrary inequity that should not be adopted. While the rule is necessary and reasonable, the Department should consider increasing the equity payment available to providers in the situation mentioned. It should also explain whether or not the capital debt reduction allowance can be used to prepay capital debts where prepayments are not "prohibited" but involve some penalty, such as an additional interest payment.

9553.0060, subp. 7, Reimbursement of Lease or Rental Expense.

162. This subpart governs the lease or rental costs of a provider. Under item A the lease of depreciable equipement is allowable if the lease is an arm's-length transaction; the costs under the lease are equal to or less than the costs of purchasing the depreciable equipment; and the lease does not exceed a period of 60 days annually. Under item B, sale and leaseback arrangements, leases with options to buy at less than anticipated value, leases with related organizations, or leases required to be capitalized in accordance with generally accepted accounting principles are not considered to be arm's-length transactions. These provisions are necessary and reasonable to assure that lease costs are not excessive.

9553.0060, subp. 7, item C.

163. This item contains limitations on the costs of leasing a facility's physical plant. The costs under leases which are not arm's-length leases for purposes of item B are not allowed. Furthermore, arm's-length lease costs incurred under agreements entered into after December 31, 1983 are disallowed. Arm's-length leases or rental costs incurred under agreements entered into on or before December 31, 1983 are allowable under the rules and regulations in effect on December 31, 1983 subject to some limitations. As originally proposed, the renewal, renegotiation or extension of a lease or rental agreement entered into on or before December 31, 1983 were allowable only to the extent that the new lease or rental cost did not exceed the previous lease or rental cost. Several persons objected to this limitation. Ms. Rowland noted, for example, that many non-profit facilities have very favorable leases and even if they are renegotiated at a higher price, the ultimate lease payment may be substantially more favorable than the payments that would be made if similar facilities were rented from a third party. She argued, therefore, that some rental increases upon renegotiation of such leases should be authorized. The Department agreed with those comments and proposes to amend item C, subitem (4) to read as follows:

> (4) Increases in lease or rental costs resulting from the renewal, renegotiation, or extention of a lease or rental agreement in subitem (3) are allowable to the extent that

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the facility's property-related payment rate does not exceed the average property-related payment of all facilities in the state.

Item C as amended by the Department, is necessary and reasonable, and the amendment made does not constitute a substantial change for purposes of Minn. Rule 1400.1100 (1985). The amendment does not apply to increases in the rent of office space under arm's-length leases, as the Department noted in its post-hearing comment (p. 46). Since central office rental is an administrative cost, any increase in an arm's-length lease payment would be allowed if within the administrative cost limitation.

DETERMINATION OF TOTAL PAYMENT RATES

9553.0070, subp. 4, Adjustment to Total Payment Rate for Phase-in of Common Reporting Year.

164. Subpart 4 reads as follows:

> A facility whose total payment rate established for the rate year beginning during calendar year 1985, will be in effect for a period greater than 12 months due to the phase-in of a common reporting year, shall receive for the months over 12 months, its total payment rate increased by the prorated annual percentage change in the all urban consumer price index (CPI-U) for Minneapolis/St. Paul as published by the Bureau of Labor Statistics between January 1984 and January 1985, new series index (1967 = 100). That adjusted total payment rate shall be in effect until September 30, 1986. This adjusted total payment rate must not be in effect for more than nine months.

Mary Jo Mulloy, a certified public accountant, questioned the meaning of this subpart. The Department explained how this rule would apply during the hearing. As the Administrative Law Judge understands it, the last cost report a facility will file under Rule 53T will be the cost report which establishes a new rate effective some time in calendar year 1985. Therefore, the last rule 53T cost report filed by a facility will be one filed for a period ending prior to December 31, 1985. The rate determined under that final Rule 53T cost report will remain in effect until September 30, 1986, even if that period exceeds 12 months. However, when the rate is effective for a period of time longer than 12 months, the rate is adjusted for changes in the Consumer Price Index. For example, a facility which has a fiscal year ending on November 30, 1985, must file a Rule 53T cost report for the fiscal year ending on that date. It will file no other cost reports under Rule 53T. However, it will also be required to file a cost report covering the calendar year ending December 31, 1985 which will determine its rates effective on October 1, 1986. Its rate prior to October 1, 1986 will be governed by the payment rate established under the cost report filed for the period ending November 30, 1985. Thus, these rules will govern rates payable on and after January 1, 1986, the effective date of the rule. It merely continues the rate facilities would have otherwise received under Rule 53T through September 30, 1986 as adjusted by the Consumer Price Index, and effective on October 1, 1986 new rates become effective. Those rates will be calculated on the basis of the cost report all providers must file for the calendar year ending December 31, 1985. Although there were objections to this procedure, the rule as explained is necessary and reasonable.

RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

9553.0075, subp. 1, Interim Payment Rate.

165. Under this subpart a provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50% of its licensed beds from Class A beds to Class B beds, provided that the conversion is approved by the Commissioner. Many individuals requested that the Department amend this rule to permit interim rates for facilties that voluntarily decertify a substantial number of beds. Bed decertification is an important issue. However, since bed reduction projects are tied to the allocation of waivered service slots, the Department has determined that new procedures for bed reduction in addition to those already available should not be created in this rule. In its view, any bed reduction project approved by the Commissioner can receive a rate adjustment under the language governing Class A to Class B conversions. However, it has rejected reducing the minimum level of conversions from the 50% figure originally proposed. In its view, in order to justify the costs of converting a facility from Class A beds to Class B beds it is necessary to insure that a substantially number of Class B beds are added to this system because these conversions require extension modifications to the physical plant of a facility. Moreover, it is concerned that if a threshold of less than 50% is adopted, facilities could make repeated requests for interim rates. The rule proposed by the Department is necessary and reasonable. Although it could be argued that the rule should be more flexible, the Department is not required to adopt the most reasonable alternatives available, but may within its discretion adopt any reasonable approach. The approach it has adopted in this rule is reasonable.

9553.0075, subp. 2, item B, subitem (5).

166. This subitem, previously lettered as subitem (4), provides that the settle-up total payment rate must not exceed the interim payment rate by more than 0.4166% for each full month between the effective date of the interim payment rate and the end of the first fiscal period. The Department has elected a .4166% per month increase limitation to provide incentives for facilities to accurately budget and effectively manage their budgets during the interim period. The limitation will also enable the Department to rely upon the budgets submitted when evaluating the reasonableness of new projects. Ms. Mulloy argued that the .4166 figure is a guess at future inflation and said that limitations upon new facility costs should be the same as in other areas of the rule. Those arguments were not persuasive. The LAC Report noted that large discrepancies between the interim and settle-up payment rates had occurred in the past were undesirable and that steps should be taken to reduce those differentials. The proposed rule does just that and it is necessary and reasonable.

APPEAL PROCEDURES

9553.0080, subp. 1, Scope of Appeals.

167. Under subpart 1, provider appeals are permitted if three conditions are met. The appeal, if successful, must result in a change to the facility's total payment rate, the appeal must arise from an application of this rule and its predecessors, and the provider has first filed a Notice of Intent to Appeal which is not informally resolved within 30 days. Ms. Martin and Mr. Furlong both objected to the requirement that the appeal, if successful, result in a change to the facilities total payment rate. Limiting appeals to those which would affect the payment rate is authorized, necessary and reasonable. A similar requirement is contained in Minn. Stat. § 256B.50, concerning the appeals of nursing homes. Moreover, the rule does not prohibit appeals which have no immediate impact on rates; if they may have a subsequent impact on rates an appeal is authorized. Thus, the concerns raised by Ms. Martin and Mr. Furlong will not be a problem. If there is a rate impact, there is a right to appeal.

9553.0080, subp. 2, Filing of Appeals.

168. Under item A, the appealing party must notify the Commissioner in writing of its intent to appeal within 30 days of receiving the total payment rate determination or decision which is being appealed. If the issue is not informally resolved within 30 days of the filing of the Notice of Intent to Appeal, a written appeal must be filed. Under the rule, it must be filed within 60 days after receiving the total payment rate determination or decision which is being appealed. These are necessary and reasonable provisions. However, it should be noted that while the rule contains time limits for filing appeals, those time limits are not jurisdictional. In a recent decision, the Minnesota Court of Appeals held that the Department of Human Services cannot establish jurisdictional time limits for the filing of appeals without an express statutory authorization. Leisure Hills of Grand Rapids, Inc., v. Levine, 366 N.W.2d, 302, 304 (Minn.App. 1985). In this case, the Department has cited no express statutory authorization permitting it to establish jurisdictional time limits for the filing of appeals.

9553.0080, subp. 2, item B.

169. Under this item, any appeal filed must specify the item disputed and the reasons for the dispute; the computation and that amount that the provider believes to be correct; an estimate of the dollar amount involved in each disputed item; and the authority in statute or rule upon which the provider is relying in each diputed item; and the name and address of the person or firm with whom contact may be made regarding the appeal. These provisions are designed to inform the Department of precise nature of the appeal. This will enable the Department to detect mjstakes. In addition, it will assist the Department in its efforts to informally resolve disputes and will assist it in prioritizing and scheduling unresovled disputes for hearing. Several persons expressed the concern that the a provider which cites the incorrect authority upon which it relies or otherwise makes a mistake in complying with this rule, will be subsequently prejudiced by any errors or omissions made. However, the rule does not prejudice providers in that respect. If a provider makes a

mistake in the authority relied upon or the basis for his appeal, it will not be precluded from raising any additional issues or arguments it has when that matter comes on for a contested case hearing. Consequently, it is concluded that the rule proposed is necessary and reasonable.

9553.0080, subp. 3, Resolution of Appeal.

170. This item states that any appeal shall be heard as contested cases under the provisions of the Administrative Procedure Act. It permits the dispute to be resolved informally through any informal dispute resolution method established by agreement between the Commissioner and the Chief Administrative Law Judge. These provisions are necessary and reasonable. Ms. Martin objected to this provision because it does not contain a time limit for the Department to commence a contested case proceeding. She noted that facilities must frequently wait for years before contested case hearings are scheduled by the Department and that the rule must contain some limitations. Mr. Furlong made similar arguments. He suggested that some penalty be included which would require the Department to seek a timely hearing and resolution of appeals filed. The Administrative Law Judge recognizes that the untimely resolution of contested issues should not occur. However, the need for a timely resolution of contested issues must be balanced against the need for a proper resolution of those issues so that public monies are not improperly spent. Any given appeal could involve substantial sums of money. If the Department cannot bring those appeals on for hearing in a timely fashion, it cannot be penalized. Permitting facilities to obtain monies they are not entitled to receive under the applicable laws and rules cannot be authorized. Therefore, it is concluded that the rule proposed is necessary and reasonable.

9553.0080, subp. 5.

171. Under this subpart, the overpayments or underpayments made by a provider or the Commissioner must be made pursuant to part 9553.0041, subp. 13. The latter rule, at item D, provides that any payments owed by the provider or the Commissioner must be made within 120 days of the written notification of the Commissioner's ruling on the appeal. Interest charges are assessed on the balance outstanding after 120 days of that written notification. Ms. Martin objected to this rule as a violation of Minn. Stat. § 16A.124, subd. 5(e). That argument is not persuasive. The statute does not apply to payments made under the Medical Assistant program. The statute applies to agency "purchases, leases, rentals, and contracts for services, including construction and remodeling contracts." No mention is made of program costs and rate payments under federal-state programs like Medical Assistance. On the contrary, it refers to bills and invoices for goods and services purchased by the state for state operations. Therefore, it is concluded that the quoted language was intended to apply to services provided to the state, and not to rate disputes arising out of the services provided to third parties under the Medical Assistance program. Even if that is not the case, the provisions of subd. 5(e) clearly do not apply to disputes resolved in contested case proceedings or related civil proceedings. Interest on decisions, awards and judgments is not mentioned and the time limits contained in clause (e) could not possibly be met in any litigation.

9553.0080, subp. 6, Appeal Expenses.

172. This subpart provides that the expenses incurred in the appeal or for individual items under appeal will be reimbursed to the provider to the extent that the appeal or the individual item was resolved in favor of the provider. Ms. Martin and Mr. Furlong both objected to this provision. Ms. Martin argued that all the expenses should be reimbursed and that those expenses should not be subjected to the limitations on administrative costs. Those arguments were addressed and rejected before in this report. Mr. Furlong argued that the language allowing the payment of the costs of an appeal which is resolved in favor of the provider are unclear. He argued that they attach a penalty to a non-adjudicated settlement. This issue was also discussed before. Under other rules, the expenses incurred for successful appeals are allowable. While different language is used in item A, the Department apparently intends that they have the same meaning as was discussed earlier. That is, that once a provider files a Notice of Intent to Appeal the provider is entitled to the fees incurred if it is successful in obtaining a reversal or modification of the initial determination made by the Department. Success would be recognized if the provider fully or partially prevails in a hearing on the merits or if the Department and the provider enter into a stipulated settlement favorable to the provider. If the Department has a different intention it must clarify the rule. In addition, it is suggested that item A be amended to read: "the provider's appeal is successful." It is preferable to use consistent terminology throughout the rule to reflect the same concept.

173. The proposed rules are long, complex and controversial. Public comments addressed virtually every provision. The Department responded to most of them and made a variety of amendments to address concerns raised. Not all the comments made or the amendments proposed have been discussed in this Report. Where no specific finding to the contrary is made, it has been concluded that the rule, as amended, is necessary and reasonable and that the amendment made did not result in a substantial change. Since so many issues were raised and addressed by the public, some objection were not discussed in sufficient detail. That necessarily limits the kinds of alternate relief that might otherwise have been suggested or required. Other issues of a legal nature, such as the impact and requirements of DeFRA and the problems associated with retroactivity should be resolved in a contested case setting if disputes arise so that the facts and law can be briefed and considered in detail. The most troublesome issue is the equity returns and cash flows available under the rules. As suggested before, the Department should carefully review those provisions. The objections and concerns raised by the public indicate that this will be a problem area.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the hearing in this matter.

2. That the Department has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule.